IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TIE DOWN, INC.,	)	
	)	
Plaintiff,	)	
	)	**Civil Action No. __________**
v.	)	
	)	
ROOFTOP ANCHOR, INC.,	)	**JURY TRIAL DEMANDED**
	)	
Defendant.	)	
______________________________	)	

COMPLAINT FOR DECLARATORY JUDGMENT

Tie Down, Inc. (hereinafter "Tie Down") hereby brings this Complaint for Declaratory Judgment against the Defendant Rooftop Anchor, Inc. ("Defendant" or "Rooftop").

NATURE OF THE ACTION

1.

This is a declaratory judgment action for patent non-infringement under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., and under the United States Patent Act, 35 U.S.C. §§ 1, et seq., seeking a declaration that the claim of U.S. Design Patent No. D758,609 ("the '609 Patent" or "the patent-in-suit") is not infringed by Tie Down. A true and correct copy of the '609 Patent is attached hereto as Exhibit A. An actual, substantial, and continuing justiciable controversy exists between Tie Down and Rooftop that requires a declaration of rights by this Court.

THE PARTIES

2.

Plaintiff Tie Down is a Georgia corporation having its principal place of business at 255 Villanova Drive, Atlanta, Georgia 30336. Tie Down and its predecessors have been manufacturing products for multiple categories of industry in the primary metals market since 1971. Tie Down designs, manufactures, and sells a variety of roofing safety products, including, among other things, guardrails, mobile fall protection systems, and fall arrest anchors.

3.

On information and belief, Defendant Rooftop is a Utah corporation having its principal place of business at 844 S. 430 W., Heber City, Utah, 84032. Rooftop is registered to do business in the State of Georgia, has obtained a certificate of authority authorizing it to transact business in the State of Georgia, and maintains a registered agent in the State of Georgia to receive service of process. On information and belief, Rooftop may be served with process at the office of its registered agent InCorp Services, Inc. at 2000 Riveredge Pkwy. NW, Ste. 885, Fulton, Atlanta, Georgia, 30328. On information and belief, Rooftop manufactures and installs rooftop access fall protection systems.

JURISDICTION AND VENUE

4.

This Court has original federal subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5.

This Court has personal jurisdiction over Rooftop because, on information and belief, (i) Rooftop maintains continuous, systematic, and purposeful contacts with the State of Georgia and this district, including Rooftop's offering for sale, selling, distributing, and advertising of its products and services to and conducting other business with actual and potential customers who are residents of the State of Georgia and this district; Rooftop's attempts to enforce the '609 Patent against Tie Down, an entity having a principal place of business in Georgia, for alleged infringing activity occurring in Georgia; traveling to the state of Georgia and this district to attend one or more trade shows, including the 2016 American Society of Safety Engineers' Safety Show; and Rooftop's registering to do business and appointing of a registered agent in the State of Georgia; (ii) the cause of action set forth herein arises out of Rooftop's activities in the State of Georgia; and (iii) the exercise of jurisdiction over Rooftop will not offend the traditional notions of fair play and substantial justice.

6.

In addition, this Court has personal jurisdiction over Rooftop because, on information and belief, Rooftop has consented to personal jurisdiction by virtue of registering to do business in the State of Georgia, obtaining a certificate of authority authorizing it to transact business in the State of Georgia, and appointing a registered agent in the State of Georgia to receive service of process.

7.

Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND FACTS

8.

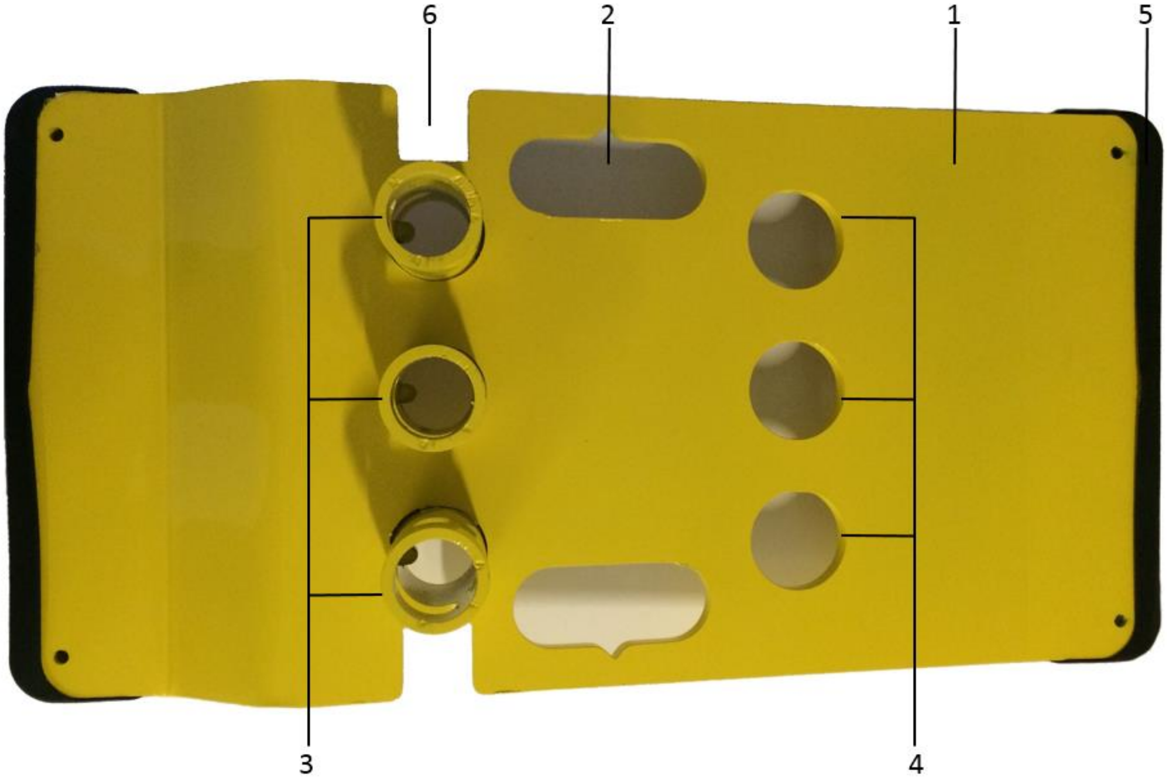
On January 11, 2017, Tie Down announced that it would introduce its new "RZ Guardrail System" and related "Zip Base" at the International Roofing Expo in Las Vegas, Nevada on March 1, 2017.

9.

Tie Down's Zip Base is a component of its RZ Guardrail system. When properly installed on building rooftops, the RZ Guardrail system prevents users from accidentally falling over the roof's ledge.

10.

The Zip Base is designed to be placed at the edge of the building, and it creates a solid base for guardrails to be installed. The Zip Base is shown below in an aerial view, with annotated reference numbers to highlight the following components: (1) an angular base plate; (2) a handhold; (3) guardrail post sockets; (4) clearance holes to allow nesting during storage and shipping; (5) rubber non-skid feet; and (6) toe board slots.



11.

On February 28, 2017, before Tie Down attended the International Roofing Expo, Rooftop, through its counsel, sent Tie Down a cease and desist letter, wherein Roof Top asserts that Tie Down infringes the ’609 Patent (the “Cease and Desist Letter”). A true and correct copy of the letter is attached hereto as Exhibit B.

12.

In its Cease and Desist Letter, Rooftop purports to be the owner of the ’609 Patent, encloses a copy of the ’609 Patent, identifies Tie Down’s Zip Base as an “accused device,” and claims that the Zip Base “is infringing [Rooftop’s] D758,609 patent claims [sic].” Rooftop further demands in its Cease and Desist Letter that the Zip Base “be phased out until no additional units are manufactured and sold, and a reasonable royalty paid for those sold in the past and future.” Finally, Rooftop’s Cease and Desist Letter warns that “failing to hear from you within the next ten (20) [sic] days, we will assume that you intend to ignore our demands, and we will take appropriate legal action.”

13.

Tie Down believes that Rooftop’s allegations of patent infringement are meritless because, e.g., an ordinary observer would not think that the design of Tie

Down's Zip Base is substantially the same as the patented design of the '609 Patent when the two designs are compared in the context of the prior art. Indeed, a side-by-side comparison showing the figures of the '609 Patent and the Zip Base is attached hereto as Exhibit C. As can be seen from the comparison using the reference numbers for the components identified above, the design of Tie Down's Zip Base is substantially different from the patented design for numerous reasons including, but not limited to:

- the Zip Base's base plate (1) is angular when viewed from the side whereas Figs. 5 and 6 of the '609 Patent claim a sweeping, non-angular base;
- the Zip Base contains two toe board slots (6) whereas the '609 Patent does not claim any toe board slots;
- the Zip Base's guardrail post sockets (3) are separated from each other, with noticeable spacing in between, whereas Figs. 3, 4, 7, and 8 of the '609 Patent claim guardrail post sockets joined together into a single unitary component;
- each side of the Zip Base is primarily formed by straight lines whereas Figs. 3 and 4 of the '609 Patent claim sides that curve inward;

- the Zip Base's front and back edges are each covered by straight, rubber non-skid feet (5) whereas Figs. 3 and 4 of the '609 Patent claim front and back edges that are curved; and
- the Zip Base's handholds (2) are small cutouts with an indention used in the manufacturing process whereas Figs. 3 and 4 of the '609 Patent claim large cutouts that cover the majority of the base; and
- the Zip Base's base plate is substantially solid at one end past the guardrail post sockets (3) whereas Figs. 3 and 4 of the '609 Patent claim a base having two large cutouts on both sides of the guardrail post sockets.

14.

As a result of Rooftop's assertions that Tie Down is infringing the '609 Patent, and Tie Down's denial of the same, an actual and justiciable controversy exists between the parties of sufficient immediacy and reality to warrant issuance of a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 as to the alleged infringement of the design claimed in the '609 Patent.

COUNT I
Declaration of Non-Infringement by Tie Down of the ’609 Patent

15.

Tie Down incorporates by reference its allegations in Paragraphs 1 through 14 as though fully set forth herein.

16.

Rooftop purports to be the owner of the ’609 Patent.

17.

Rooftop accuses Tie Down of infringing the ’609 Patent.

18.

Tie Down has not and does not directly, indirectly, contributorily, and/or by inducement infringe the ’609 Patent for reasons including, but not limited to, the substantial differences between the design of the accused Zip Base and the patented design identified above render the designs plainly dissimilar and not substantially the same in the eye of an ordinary observer.

19.

Nonetheless, Tie Down has a reasonable apprehension of being sued by Rooftop for alleged infringement of the ’609 Patent, based on Rooftop’s activities described above, including the Cease and Desist Letter it sent to Tie Down on February 28, 2017.

20.

An actual and justiciable controversy regarding the alleged infringement of the ’609 Patent exists between Tie Down and Rooftop, which have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

21.

A judgment declaring that Tie Down does not infringe the ’609 Patent would finalize the controversy between the parties and offer them relief from uncertainty.

22.

Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., Tie Down is entitled to a declaration that it does not infringe the ’609 Patent.

23.

In light of the existing controversy, Tie Down will be damaged in the absence of such declaration.

PRAYER FOR RELIEF

WHEREFORE, Tie Down prays for the following relief:

1. Pursuant to 28 U.S.C. §§ 2201 and 2202, a Judgment that Tie Down has not infringed and is not infringing the ’609 Patent; and
2. Such other and further relief as the Court may deem necessary and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Tie Down demands a trial by jury on all issues triable by right of jury.

Respectfully submitted this 20th day of March, 2017,

/s/ Coby S. Nixon
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Attorneys for Plaintiff Tie Down, Inc.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing pleading was prepared using Times New Roman, 14-point, and otherwise conforms to the requirements of Local Rule 5.1.

This 20th day of March, 2017.

Respectfully submitted,

/s/ Coby S. Nixon

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